

# Protecting against Conflict of Interest

## Considerations:

If the only considerations in designing and implementing the Resource Center process were maximum efficiency and effectiveness in terms of consumer responsiveness and convenience, all functions would be provided by a single person or team of persons in as few separate contacts as possible. That is how the Resource Centers being piloted in Family Care have been operating (see Attachment 1), and they have cut the time required between application for Waiver services to enrollment from an average of 30 to 40 days to 2 or 3 days. When necessary, persons have been enrolled in the same day they applied. Unfortunately, consumer responsiveness and convenience are not the only considerations. There is the potential for the organization performing the functions of eligibility determination and enrollment counseling to have interests that compete with the interests of the consumer and/or the public good.

It is the method of protecting against this conflict of interest for which the Health Care Financing Administration, the State and the Family Care pilot counties need to reach agreement. In considering how to implement all of the Resource Center functions, it is essential to balance these two factors. Too heavy an emphasis on consumer responsiveness and convenience could result in an unacceptable level of exposure to conflict of interest and the associated potential for such managed care concerns as “rate creep,” “cherry-picking” and “creaming.” Conversely, too much emphasis on preventing conflict of interest could damage the ability of the Resource Center to provide access to Family Care and other community services in a manner that is responsive to the needs of the people seeking assistance.

## Protecting against Conflict of Interest in Different Resource Center Functions:

The State is committed to protecting against all conflict of interest, but believes that differing levels of protection are required for different functions.

In Enrollment Related Information and Choice Counseling: The State believes that our greatest concerns and effort to protect against conflict of interest is needed in enrollment counseling, so we can ensure that consumers receive accurate unbiased information. Therefore, for all enrollment counseling in Family Care, the State believes that it is necessary to contract with an entity that is completely independent of any county, Resource Center, CMO or other service provider.

In Level of Care Assessment: The “one-stop shopping” nature of Resource Centers (see Attachment 1) results in extensive benefits in terms of responsiveness and convenience for consumers. It also benefits the State and its contractors in terms of administrative simplicity and efficiency. We believe that, because of the automated nature of level of care scoring in Wisconsin’s approved functional screen and its extensive quality assurance systems (see Attachment 2), the degree of separation required to avoid conflict of interest in evaluating level of care does not need to be as extensive as the independence required for enrollment counseling. In this State-controlled process for assessing level of care, even if a county were to score functional screens incorrectly to its benefit, excess funding would be recouped through either detection and imposition of sanctions.

## Proposing a Balanced Approach to Level of Care Assessment:

On balance, we believe that the benefits of integrating functional assessment with other Resource Center functions outweigh the remote chance that a county could conduct those assessments in such a way as to benefit by collecting more State and federal funding for a CMO it operates, leading to “rate creep.” This has led us to conclude that our contracts for level of care assessment need not be absolutely separate and completely independent of any connection with the CMO. We believe that with appropriate State monitoring and oversight, we can contract for level of care assessment with a county agency that has a separate managing board that reports to the same county board as a CMO, and still protect against conflict of interest.

The State respectfully requests that, in view of the significant benefits to consumers and minimal danger of inflated rates, HCFA allow Wisconsin to pilot the following options for contracting for level of care assessments in Family Care demonstration counties. Each Family Care pilot county will select one of the options for contracting with the State to provide level of care assessment and CMO services summarized in the table below, and described later in further detail.

**Table1: Options for Contracting Level of Care Assessment**

	County implementation options		Resulting State contracting	
	If the Resource Center is operated by...	The CMO and other LTC services may be operated by...	And the State will contract for <u>level of care assessment</u> with...	And will always contract for <u>enrollment counseling</u> with...
Option 1a	<ul style="list-style-type: none"> <li>A FC District, or</li> <li>A private entity not associated with the County</li> </ul>	<ul style="list-style-type: none"> <li>A County agency</li> </ul>	<ul style="list-style-type: none"> <li>A Resource Center operated by the FC District, or</li> <li>A Resource Center operated by another private entity</li> </ul>	<ul style="list-style-type: none"> <li>A private entity not associated with a county, a Resource Center, a CMO, or any other LTC service provider</li> </ul>
Option 1b	<ul style="list-style-type: none"> <li>A County agency</li> </ul>	<ul style="list-style-type: none"> <li>A FC District, or</li> <li>A private entity not associated with the County</li> </ul>	<ul style="list-style-type: none"> <li>A Resource Center operated by the County</li> </ul>	
Option 2	<ul style="list-style-type: none"> <li>A County agency</li> </ul>	<ul style="list-style-type: none"> <li>A County agency</li> </ul>	<ul style="list-style-type: none"> <li>The County Economic Support Agency “super-worker” separate from within the Resource Center or CMO</li> </ul>	
Option 3	<ul style="list-style-type: none"> <li>A County agency from a different county than that which operates the CMO</li> </ul>	<ul style="list-style-type: none"> <li>A County agency from a different county than that which operates the Resource Center</li> </ul>	<ul style="list-style-type: none"> <li>A County agency from a different county than that which operates the CMO</li> </ul>	
Option 4	<ul style="list-style-type: none"> <li>A County agency</li> </ul>	<ul style="list-style-type: none"> <li>A County agency</li> </ul>	<ul style="list-style-type: none"> <li>A Resource Center operated by the County <u>only</u> with extensive monitoring, oversight &amp; sanctions, or</li> <li>A Resource Center operated by another private entity</li> </ul>	

Option 1. This is the same as the “Family Care District” option described in previous communications. The Family Care District meets the standards for separation in the proposed revisions to the Family Care statute (see Attachment 3). It allows all Resource Center functions except enrollment counseling to be contracted for and completed by staff of a single agency. The County creates a Family Care District to:

Option 1a. Operate the Resource Center ? the State will contract with this Family Care District-operated Resource Center for both level of care assessment and other Resource Center functions, except enrollment counseling.

Option 1b. Operate the CMO and any other county-owned service providers ? the State will contract with the county-operated Resource Center for both level of care assessment and other Resource Center functions, except enrollment counseling.

Option 2. The State enters into separate contracts with a single county to operate a CMO, to operate a Resource Center, and with the County Economic Support Unit to conduct level of care assessment using “superworkers” trained and qualified to both determine level of care and Medical Assistance financial eligibility.

Option 3. The State enters into separate contracts with two different counties, one of which operates a Resource Center, while the other operates a CMO. The service area for the Resource Center and CMO could be a single county or a multi county area.

Option 4. The State enters into separate contracts with a single county to operate a CMO, and to operate a Resource Center (including level of care assessment), under the following circumstances: 1) the CMO and Resource Center have separate managing boards, administration and staff; and 2) the Resource Center contract includes extensive contractual monitoring, oversight and sanctions for inaccurate level of care assessment assessments.

This is a new option that combines elements of the “superworker” option and the “100% functional screen review” options described in previous communications. ). It allows all Resource Center functions except enrollment counseling to be contracted for and completed by staff of a single agency. As described in Attachment 2, the State will monitor extensively the accuracy of the county’s level of care assessments. In the event that level of care assessments under this option show discrepancies, the State will successively:

- Impose corrective actions;
- Take fiscal sanctions; and,
- Terminate the county’s contract for level of care assessment and enter into a contract with an entity or entities that are completely independent of any connection with the county Resource Center or CMO. (HCFA has already approved this model for contracting with an independent entity described in earlier communications). This sanction would interrupt the flow of services an individual experiences in the Resource Center.

## **Reasons to Integrate Functional Eligibility with Other Resource Center Functions:**

Wisconsin would like the opportunity to demonstrate integration of functional eligibility with other county-operated Resource Center functions despite the appearance of conflict of interest with the CMO for the following reasons:

1. Most importantly, integrating functional eligibility with other Resource Center processes is more effective for consumers, significantly streamlining the process for accessing long term care benefits because:
  - It's more convenient. Most level of care assessments for Family Care are processed where consumers live. Consumers are spared the effort and embarrassment of going to "the welfare office" to apply for long term care services.
  - It's more informative to evaluate consumers' needs in their own environment, where their preferences, strengths and resources can best be appraised.
  - It's more responsive. Consumers get the services they need much more quickly. Resource Centers have reduced the time it takes for a consumer to go from application to having services in place from an average of four to six weeks for the current HCB waivers, to a few days for Family Care, in many cases within 24 hours.
  - The process is simpler and less confusing, repetitive and intimidating. Fewer people have to see and interview a consumer in order to provide short-term information and assistance or referral, information about available long term care service options, and determine eligibility.
2. There is no potential harm to consumers because:
  - The State plans to keep enrollment/choice counseling ? the function where there is the greatest potential that consumers' interests could be jeopardized when done by an individual or organization with competing interests ? completely separated from any county, Resource Center, CMO or other long term care service provider.
  - There is little potential that consumers' interests will be jeopardized if level of care assessment is done by an individual or organization with competing interests. Over-rating level of care does not harm consumers, and Family Care's independent advocacy service and consumer-friendly grievance process will protect consumers from intentional under-rating of level of care.
3. State control of the functional eligibility process will prevent counties from fraudulently obtaining overpayment of State and federal funds, because:
  - Wisconsin's functional screen is a State-controlled process that reliably and objectively assesses level of care.
  - The State will monitor and evaluate the performance of Resource Centers in determining functional eligibility to ensure that they assign honest, fair and accurate levels of care.
  - The State's monitoring, sanctions minimize the possibility that a county could benefit from attempting to manipulate the functional screen.

4. It is more cost-effective to integrate functional eligibility with other Resource Center processes than to separate responsibility for related tasks in different entities, which results in the same work being repeated by different staff for different purposes, and unproductive time while specialists wait to perform their piece of the process.
5. The simplest, most effective and efficient processes should be at least tried in the pilot phase of a new program. It is undeniable that absolute separation of level of care assessment from the CMO will provide maximum protection against misuse of funds. But, Wisconsin believes it can protect against such misuse without the loss of convenience, responsiveness effectiveness and efficiency that goes along with absolute separation. Piloting level of care assessment within Resource Centers will give us the opportunity to evaluate, based on actual data, whether Wisconsin's plan to control the functional eligibility determination process is successful in achieving accurate unbiased levels of care, or whether a higher level of separation is necessary to protect against conflict of interest in level of care assessment.

**Table 2: Attachments and the questions related to conflict of interest to which they respond**

- Attachment 1: What are the Resource Center functions and processes? Why is it important to integrate as many functions as possible in the Resource Center?
- Attachment 2: Does the functional screening process result in objective, verifiable levels of care? How does the State control the process of level of care assessment?
- Attachment 3: How are Family Care Districts separated from county government?